CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 86

OPAL SAXTON DAVIS, PETITIONER,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR CERTIORARI FILED MAY 4, 1942.

CERTIORARI GRANTED MAY 25, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

OPAL SAXTON DAVIS, PETITIONER,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX.

	Original	Print
Proceedings before Department of Labor and Industries	1	1
Claim for pension	1	1
Order of Supervisor rejecting claim	2	3
Order of Joint Board sustaining supervisor	3	4
Record from Superior Court of King County	4	5
Notice of appeal to Superior Court	4	5
Findings of fact and conclusions of law	5	6
Judgment of dismissal	13	11
Notice of appeal to Supreme Court	15	12
Proceedings in Supreme Court of Washington	16	13
Opinion, Blake, J.	16	13
Order denying petition for rehearing	21	16
Judgment	22	16
Praecipe for transcript of record	23	17
Clerk's certificate (omitted in printing)	24	
Order to transmit original exhibits	25	18
Plaintiff's Exhibit 5—Photograph	26	18
Plaintiff's Exhibit 6—Photograph	27	18
Clerk's certificate (omitted in printing)	28	
Order allowing certiorari		19

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 27, 1942.

[fol. 1]

STATE OF WASHINGTON, DEPARTMENT OF LABOR AND INDUSTRIES, INDUSTRIAL INSURANCE DIVISION

CLAIM FOR PENSION BY WIDOW OR CHILDREN

Statutory Provisions;

1. Cash payment to widow when proofs are in: $250.00.
2. Pension to widow: $35.00 per month, which ceases upon remarriage with $240.00 payment.
3. To widow for children to age 16: $12.50 per month for youngest or only child; $7.50 for next youngest; $5.00 for each additional child. Guardian not required when widow living and children under her care.
4. To orphan children: $25.00 per month each, maximum for all $75.00 a month, which will be paid through legal guardian.
5. Burial allowance: $150.00 where there is a widow or orphan child, will be paid to undertaker only where he makes affidavit that no part of the burial expenses have been either directly paid by or charged to the widow or orphan child. $100.00 allowed for unmarried man.
6. Invalid widower of deceased workman rated same as widow.

Claim:

1. The deceased workman: Name Ancil Evan Davis.
Date of birth June 9, 1901. Place of birth Minn. (Martin Co.)
Date of marriage May 29, 1938. Place Wenatchee, Wn.
Employer when injured Manson Construction Co.
Date of injury June 8, 1940. Date of Death June 8, 1940.
Cause of death Accidental drowning.
Physician at time of death —— ——.
Undertaker Forkner's University Parlors. Address 4214 Univ. Way.

2. The widow: (own given name in full) Opal Saxton Davis.
Date of birth: Month Apr. 27, 1900. Day 27. Year 1900.
Address: House No. —. Street ——.
Town Johnsonville, County Wayne, State Ill.
If divorced from deceased give date ——.

If separated give date of separation ——.
Cause of separation——.
If remarried since death of workman give date of remarriage: ——.

3. Children of deceased (Child includes posthumous child, step-child, one legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury):
Name: Donna Laurene.
Date of birth: Nov. 10, 1938.
Sex: Female.

4. Guardian: Full name ——. Age —.
Address: House No. ——. Street ——.
Town ——. County ——. State ——.
Date of appointment ——.

5. Documents to be attached:
(a) Widow will attach marriage certificate, which will be returned after inspection. O. K. Ret. 9/3/40—WR. (s.)
(b) Guardian will attach certified copy of letters of guardianship.

☞Widow to Also Answer Following Questions☜

Place of birth Johnsonville, Ill. Are you a citizen of the U. S.? Yes.

6. Other instructions:

Upon receipt of this claim the department, if it has not already done so, will write for and procure the employer's report, report from last physician or coroner, and undertaker, and other proofs that may be required, whereupon claim will be decided.

Claimants who are aliens, not residing in the United States will observe requirements on letter of instructions to be attached hereto.

Dated this 16 day of July, 1940.

Sign Here Opal Saxton Davis (s), Widow or Guardian

State of Wash.,
County of King, ss:

On this 16 day of July, A. D. 1940, personally appeared before me the above named Opal Saxton Davis, and made oath that the answers by him or her above made are true,

and that he or she has concealed no fact from the Industrial Insurance Division.

(s.) Thos. P. Carlon, Notary Public or Justice of the Peace. (Seal.) Notarized.

(Unless officer taking acknowledgment has official seal, certificate of appointment will be required.)

Rec'd Jul. 20, 1940.

[fol. 2] [Stamp:] Mailed Sep. 3, 1940. Department of Labor & Industries, Olympia. (s.) W. R.

In and Before the Supervisor of Industrial Insurance Department of Labor and Industries, State of Washington

Manson Construction Company, Seattle, Washington.

Claimant

Opal Saxton Davis, 5227-37th Ave. N. E., Seattle, Washington.

ORDER AND NOTICE

Claim No. 968217. Firm No. —. Class ——. Date Injured July 8, 1940.

On this date, the complete record of the above claim being presented to the Supervisor of Industrial Insurance, and he having carefully and thoroughly considered all matters contained therein, and you being hereby notified, now:

It Is Hereby Ordered that

Whereas, Opal Saxton Davis, widow of Ancil Evan Davis, deceased, filed a claim for pension with this Department alleging that the accidental drowning of deceased on July 8, 1940 was due to an industrial injury coming within the scope of the workmen's compensation act, and

Whereas, after thorough investigation it has been determined that the work which the claimant was doing at the time of the said fatal accident does not come under the jurisdiction of the workmen's compensation act but is maritime in character.

It Is Therefore Hereby Ordered that the aforesaid claim be rejected for the following reason: That the alleged injury

was sustained on board a vessel in navigable waters and was therefore under Admiralty jurisdiction.

JMT:EB

Branch Office. Jay Olinger, Supervisor of Industrial Insurance, by (s.) J. M. Tiernan, Claim Agent.

Dated August 29, 1940 at Olympia, Washington.

University Funeral Parlors 4214 University Way, Seattle, Washington.

(These findings and decision hereon are official and effective when and only when signed by the personal or facsimile signature of the Supervisor of Industrial Insurance and the personal signature of the claim agent or other person duly authorized.)

On the date stamped on the reverse side hereof, the original, of which this is a copy, was deposited in the United States mail with postage prepaid and addressed to the claimant and/or other interested parties to their respective addresses as indicated on the reverse side hereof, by the person whose initials appear on said stamp.

[fol. 3] [Stamp:] Joint Board. Mailed Feb. 21, 1941. By (s.) M. V. S.

In and Before the Department of Labor and Industries, State of Washington, Joint Board

Dated February 17, 1941, at Olympia, Washington.

Mrs. Opal Saxton Davis, 5227-37th Ave. N. E., Seattle, Washington.

Claimant Ansel E. Davis, Dec'd.

ORDER AND NOTICE

Copy

Claim No. 968217. Firm No. —. Class —. Date Injured 7-8-40.

On this date, the complete record of the above claim being presented to the Joint Board in Executive Session and the Joint Board having carefully and thoroughly considered

such record together with all evidence offered in the matter, and you being hereby notified, now:

It Is Hereby Ordered That the supervisor's action be and hereby is sustained.

cc to: McMicken, Rupp & Schweppe, 657-671 Colman Bldg., Seattle, Washington.

cc to: Manson Construction Co., % J. E. Sullivan, Contractor's Service, 1006 Securities Bldg., Seattle, Washington.

Joint Board, J. W. Hoover, Director. Jay Olinger, Supervisor of Industrial Insurance. Ed Sorger, Supervisor of Safety and Industrial Relations. (s.) E. E. Stark, Secretary.

EES:MVS.

[fol. 4] In Superior Court of the State of Washington for King County

No. 325557

Opal Saxton Davis, Plaintiff,

vs.

Department of Labor and Industries of the State of Washington, Defendant

Notice of Appeal—Filed February 25, 1941

To the Department of Labor and Industries of the State of Washington; and to the Director Thereof:

You and Each of You Will Please Take Notice that the above-named plaintiff and appellant, Opal Saxton Davis, hereby appeals to the Superior Court of the State of Washington, for King County (the county of her residence) from that certain order of the Joint Board of the Department of Labor and Industries dated February 17, 1941, and mailed February 21, 1941, sustaining the action of the Supervisor of Industrial Insurance in rejecting the plaintiff's claim.

Dated this 25th day of February, 1941.

McMicken, Rupp & Schweppe, Attorneys for Plaintiff and appellant.

Office and Post Office Address: 657 Colman Building, Seattle, King County, Washington.

[File endorsement omitted.]

[fol. 5] IN SUPERIOR COURT OF KING COUNTY

[Title omitted]

Findings of Fact and Conclusions of Law—Filed May 19, 1941

This matter coming on to be heard this 7th day of May, 1941, before the Honorable Hugh C. Todd, one of the judges of the above-entitled court, and the plaintiff, Mrs. Opal Saxton Davis, being represented by her attorneys, McMicken, Rupp & Schweppe, Maurice R. McMicken appearing in the matter, and the defendant, Department of Labor and Industries of the State of Washington, being represented by Smith Troy, Attorney General, and Edward S. Franklin, Assistant Attorney General, and the Court having considered the departmental claim file and the exhibits in the proceedings, and having listened to to the arguments of counsel and being fully advised in the premises, now enters herein its following

FINDINGS OF FACT

I

That Ancil Evan Davis met his death by accidental drowning in the Snohomish River, a navigable body of water connecting with Puget Sound, near Everett, Washington, on July 8, 1940, during the course of his employment while employed as a structural iron worker by the Manson Construction & Engineering Company, a corporation, of [fol. 6] Seattle, Washington, leaving surviving him the plaintiff, Opal Saxton Davis, and a minor child, Donna Laurene Davis; that the Manson Construction & Engineering Company is a contributor to the Workmen's Compensation Fund of the State of Washington.

II

That the Manson Construction & Engineering Company had a contract with the Washington State Highway Department (No. 2524) to build a portion of the new Snohomish River bridge spanning the Snohomish River at Everett, Washington, and, upon its completion, also to dismantle the old drawbridge and remove its draw-rest and piers which the new bridge was intended to supplant, both structures being about 800 feet apart.

III

That the new bridge was placed in operation on June 22, 1940, and on the same date traffic was shut off on the old drawbridge and shortly thereafter the Manson Construction & Engineering Company proceeded to dismantle the old drawbridge.

IV

That under its contract with the State Highway Department, the Manson Construction & Engineering Company was required to stock-pile the steel removed from the old drawbridge, at a place designated as the steel storage site, on the north bank of the Snohomish River, about 250 feet to the north of the draw-rest, or center pier of the drawbridge, which said storage site had been leased by the Washington State Highway Department for that purpose.

V

That the original contract provided for dismantling the [fol. 7] old structural steel of the drawbridge, with a view to its reuse in the future, but an examination of its quality indicated that it was in such poor condition it had only a scrap value, so the contract was modified, allowing the Manson Construction & Engineering Company to dismantle the steel by cutting it with oxy-acetylene torches, and the steel was ultimately sold as junk by the Washington State Highway Department to the Riverside Junk Company of Everett, Washington.

VI

That in furtherance of its contract of dismantling the old drawbridge and depositing the scrap steel on the steel storage site, on July 2, 1940, the Manson Construction & Engineering Company leased a licensed and registered barge from the Puget Sound Tug & Barge Company, at Everett, and towed the same with its own tug from the waterfront at Everett up the Snohomish River to a point under the central portion of the old Snohomish River drawbridge; that said barge was fastened alongside of a derrick barge belonging to the Manson Construction & Engineering Company, upon which was situated a derrick which was to be used in lowering the steel from the drawbridge on to the barge, and later to remove the steel from the barge to the

storage site on shore; that the derrick barge was made fast to the north side of the draw-rest, or center pier of the drawbridge, and at the down-stream or easterly portion of said pier, the up-stream end of the derrick barge being located approximately opposite the down-stream or easterly side of the old drawbridge; that the rented barge, the der- [fol. 8] rick barge and the tug owned by the Manson Construction & Engineering Company were vessels which were licensed and registered with the United States Department of Commerce, Bureau of Navigation.

VII

That the method of loading and unloading the steel removed from the old drawbridge was as follows: The Manson Construction & Engineering Company employed structural iron workers stationed on the span of the old drawbridge, to cut the steel beams with oxy-acetylene torches into appropriate lengths for handling; that cables from the derrick on the derrick barge were attached to each beam before it was cut off, and when the steel beam was completely severed, the boom of the derrick was swung around over the rented barge and the steel lowered on to the said barge as a temporary storage space until the barge was taken to the shore and the steel unloaded therefrom and stock-piled on the storage site; that when the rented barge was loaded with the severed steel beams, the said barge and the derrick barge were moved over to the river bank alongside of the storage site, which required their movement over the navigable waters of the Snohomish River, a distance of approximately 200 feet; that said movement was accomplished either by being towed to the north shore of the river by the tug belonging to the Manson Construction & Engineering Company, or, if the current was too strong, by putting cables ashore and hauling in on said cables, or by both methods jointly; the steel was then hoisted from the rented barge by means of the derrick boom, which then swung around and deposited the steel on the storage site; that at the time of the death of the deceased, the barge on which the steel was being loaded had not been completely loaded and none of the steel had at that time been unloaded and stock-piled on the steel storage site.

[fol. 9] VIII

That on July 2, 1940, the deceased was hired by the Manson Construction & Engineering Company as a structural iron worker in connection with its operations in dismantling the Snohomish River drawbridge, and continued in such employ until his death by drowning on July 8, 1940; that on the date of his death his duties were to work on the barge on which the steel was being lowered, to watch the shape of the steel being lowered to the barge, to decide where it should be placed, and to burn off with oxy-acetylene torches any short stubs of iron hanging to it that would interfere with its being properly piled.

IX

That decedent, at about 9:30 a. m. on July 8, 1940, was last seen standing on the bull-rail on the north side of the barge on which the steel was being loaded, about 30 feet from the up-stream or westerly end of said barge; that at that time he had discussed with his foreman, Dewey R. Thibeau, the best place to place on the barge a large five-ton beam that was about to be cut loose by the workmen on the draw-span; that the foreman at that time was standing on the derrick barge, just to the west or up-stream of the steam engine of the derrick; that they agreed as to where said beam was to be placed on the rented barge, and the foreman then turned to watch the final cut on the beam; that when the beam had been cut and the derrick boom started to turn it toward the barge, the foreman noticed that the decedent was missing, although only two or three minutes had elapsed since the foreman last talked with decedent; that a ladder, which had been lying on the bull-rail near where decedent [fol. 10] was last seen alive, was noticed floating in the river about 200 feet down-stream from the barge; that some of the workmen went down the river in a row boat and picked up the ladder and found floating near it decedent's gloves; that decedent's body was recovered from the river about 1:30 p. m. on July 8, 1940, at approximately a quarter of a mile down-stream from the old drawbridge.

X

That the foreman Thibeau testified that after the steel was loaded on the barge, the deceased, if he had lived,

would have accompanied the barge to the site of unloading and there assisted in the unloading of the same; but whether the unloading of the steel would have required the presence of the deceased, if he had lived, to remain on the barge or to be stationed on the shore to assist in such unloading cannot be determined, since the deceased was drowned before the barge had been completely loaded for the first time so that none of the steel had been unloaded on shore.

XI

That following the death of her husband, the plaintiff filed a claim for compensation under the Workmen's Compensation Act of the State of Washington with the Department of Labor and Industries, which claim was rejected by the Supervisor of Industrial Insurance on August 29, 1940, upon the grounds that the injury to the plaintiff's husband was sustained on board a vessel in navigable waters, and was therefore under the exclusive jurisdiction of admiralty; that the plaintiff thereupon duly and regularly appealed to the Joint Board of the Department of Labor and Industries from the order rejecting her claim, and hearings were held which culminated with the Joint [fol. 11] Board, on February 17, 1941, entering an order sustaining the rejection of the plaintiff's claim for compensation upon the grounds that, since the death of the plaintiff's husband occurred on navigable waters while in the act of loading a barge, which was then to be towed over navigable waters where it was to be unloaded, the employment of the deceased husband of the plaintiff was subject to admiralty jurisdiction, and the Workmen's Compensation Act of the State of Washington could not apply to the same, in view of the case of *Comar v. Department of Labor and Industries*, 187 Wash. 99, and other decisions of the Supreme Court, from which order of the Joint Board the plaintiff appealed to this court.

Todd, J.

From the foregoing Findings of Fact, the Court enters herein the following

Conclusions of Law

I

That the deceased husband of the plaintiff, at the time of his death, was engaged in the performance of a maritime

service on a licensed vessel while lying in the navigable waters of the United States; that the employment and duties and locality of the deceased at the time of his death were not matters of purely local concern to which the Workmen's Compensation Act of the State of Washington is applicable, but were directly related to commerce and navigation; and that the plaintiff's rights to recover for the death of her husband are governed exclusively by the law and rules of admiralty jurisdiction.

[fol. 12] II

That the order of the Joint Board of the Department of Labor and Industries dated February 17, 1941, rejecting the claim filed by the plaintiff under the Workmen's Compensation Act be and the same is hereby approved, and her appeal herein is hereby dismissed.

Done in open court this 19th day of May, 1941.

Hugh Todd, Judge.

O. K. as to form. McMicken, Rupp & Schweppe.
O. K. Smith Troy, Attorney General; Edw. S. Franklin, Assistant Attorney General.

[File endorsement omitted.]

[fol. 13] In Superior Court of King County

No. 325557

Opal Saxton Davis, Plaintiff,

vs.

Department of Labor and Industries of the State of Washington, Defendant

Judgment of Dismissal—Filed May 19, 1941

This matter coming on to be heard on the 7th day of May, 1941, before the Honorable Hugh C. Todd, one of the judges of the above entitled court, and the plaintiff being represented by her attorneys, McMicken, Rupp and Schweppe, Maurice R. McMicken appearing in the matter, and the de-

fendant being represented by Smith Troy, Attorney General, and Edward S. Franklin, Assistant Attorney General, and the court having listened to the arguments of counsel and having duly considered the matter and having entered herein its Findings and Fact and Conclusions of Law:

It is therefore hereby ordered, adjudged, and decreed that the order of the Joint Board of the Department of Labor and Industries of the State of Washington dated February 17, 1941, rejecting the claim filed by the plaintiff under the Workmen's Compensation Act be and the same is hereby approved, and her appeal herein be and the same is hereby dismissed.

It is further ordered, adjudged, and decreed that the defendant do have and recover from the plaintiff its taxable costs herein.

Done in open court this 19th day of May, 1941.

Hugh Todd, Judge.

Receipt of copy of the foregoing Judgment of Dismissal acknowledged this 9th day of May, 1941, & OK'd as to form.

McMicken, Rupp & Schweppe, Attorney for Plaintiff.

[fol. 14] Judgment Number 169799. Entered in Execution Docket, Vol. 150, Page 184.

[File endorsement omitted.]

[fol. 15] In Superior Court of King County

[Title omitted]

Notice of Appeal—May 19, 1941

Findings, Conclusions & Judgment Signed—Exceptions

Plaintiff in open Court gave oral notice of an appeal from the Judgment of the Court and all parts therefrom to the Supreme Court of the State of Washington.

[File endorsement omitted.]

[fol. 16] IN SUPREME COURT OF WASHINGTON

No. 28464. Department Two

OPAL SAXTON DAVIS, Appellant,

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondent

OPINION—Filed January 30, 1942

The plaintiff is the widow of Ancil Evan Davis, who was drowned in the Snohomish river while engaged in extra-hazardous employment. Plaintiff filed her claim for pension under the industrial insurance act. The claim was rejected by the supervisor of industrial insurance. His rejection of the claim was sustained by the joint board of the department of labor and industries. On appeal to the superior court, judgment was entered approving the order of the joint board and dismissing the appeal. From that judgment, the appeal to this court is taken.

The facts out of which the claim arose are not in dispute. Briefly summarized from the court's findings, they are as follows: Manson Construction & Engineering Company, which was a contributor to the accident fund under the industrial insurance act, had a contract with the state highway department to build a portion of the concrete [fol. 17] bridge which now spans the Snohomish river at Everett. The company also agreed to dismantle the old drawbridge and stock-pile the material therefrom on the river bank at a point about 250 feet from the bridge site. This work was commenced about the first of July, 1940. In carrying out the work, a tug, a derrick barge, and a barge were used. All three were licensed vessels. The derrick barge was towed to the drawrest of the bridge and there moored. The barge was towed alongside the derrick barge and tied to it. The steel of the bridge was cut with oxy-acetylene torches into lengths for convenient handling and storing and then lowered by the derrick on to the barge.

Davis was employed by the company on July 2, 1940, as a structural steel worker. On July 8th, the day he met his death, he was working on the barge onto which the steel was being lowered, his duties being to decide where the steel should be placed and to burn off any short stubs

of iron that might interfere with its being properly piled. About nine-thirty in the morning, he discussed with the foreman the best location on the barge to place a five-ton beam that was about to be lowered. He was standing on or near the bull-rail of the barge at the time. That was the last seen of him. About one-thirty of the same afternoon, his body was recovered about a quarter of a mile downstream.

Appellant's claim for pension was rejected on the ground that Davis was, at the time of his accident, engaged in the performance of a maritime service upon navigable waters, the theory being that the state has no jurisdiction over such accidents, and that they are not within the purview of the industrial insurance act. State v. Dawson & Co., 122 Wash. 572, 211 Pac. 724, 212 Pac. 1059; affirmed, 264 U. S. [fol. 18] 219. That he was so engaged is hardly debatable. Notwithstanding, appellant contends that, at the time of his death, her husband was engaged in an operation of purely local concern—the dismantling of a bridge pursuant to the terms of a contract between the state of Washington and his employer, Manson Construction & Engineering Company.

The supreme court of the United States has held in several cases that benefits under state compensation acts may be claimed for accidents occurring on the navigable waters of the United States when they happen in the course of a purely local operation unconnected with commerce and navigation. *Grant Smith-Porter Co.* v. *Rohde*, 257 U. S. 469; *Millers' Underwriters* v. *Braud*, 270 U. S. 59; *State Industrial Board* v. *Terry & Tench Co.*, 273 U. S. 639; *Alaska Packers Ass'n* v. *Industrial Accident Comm.*, 276 U. S. 467.

This court has applied the principle in the following cases: *Eclipse Mill Co.* v. *Department of Labor & Industries* and *Sultan Ry. & Timber Co.* v. *Department of Labor & Industries*, 141 Wash. 172, 251 Pac. 130; *Dewey Fish Co.* v. *Department of Labor & Industries*, 181 Wash. 95, 41 P. (2d) 1099. The first two of the decisions just cited were affirmed by the supreme court of the United States. *Sultan Ry. & Timber Co.* v. *Department of Labor & Industries*, 277 U. S. 135.

In none of the cases cited, however, do the facts bear any analogy to the facts in the case at bar. Indeed, the facts in all the cases thus far cited are so dissimilar as to

render the decisions inapposite as authority—particularly in light of another line of decisions of the supreme court [fol. 19] of the United States. That court has uniformly held that the "loading and stowing of a ship's cargo" in navigable waters is a "maritime service," and that claims for injury incident thereto are exclusively within admiralty jurisdiction. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52; *Southern Pacific Co.* v. *Jensen*, 244 U. S. 205; *Nogueira* v. *New York, N. H. & H. R. Co.*, 281 U. S. 128; *Liability Assurance Co.* v. *Cook*, 281 U. S. 233. In the *Jensen* case, p. 217, the court said:

"The work of a stevedore in which the deceased was engaging is maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction."

And again in the *Cook* case, p. 236:

"Whether Cook's employment contemplated that he should work regularly in unloading vessels or only when specially directed so to do is not important. The unloading of a ship is not matter of purely local concern as we have often pointed out. Under the circumstances disclosed the State lacked power to prescribe the rights and liabilities of the parties growing out of the accident."

In *Comar* v. *Department of Labor & Industries*, 187 Wash. 99, 59 P. (2d) 1113, this court accepted and applied the doctrine of those cases, denying the claim of a workman who was injured on a barge in navigable waters while engaged in unloading cargo. There is no essential difference [fol. 20] in the facts in that case and this. There, the transportation of the cargo was measured in miles, while here, it is measured in yards. But that is not a controlling factor. The accident occurred while Davis was working as a stevedore on a vessel in navigable waters loading cargo. The fact that he may have been employed as a structural steel worker is immaterial. *Liability Assurance Co.* v. *Cook*, *supra*. The loading of the steel on the barge was an integral part of the operation of dismantling the bridge. Under the decision of this court in the *Comar* case and the authorities there relied upon, this is the controlling factor—

calling for the application of the principle laid down in those cases.

Appellant lays great stress on the case of *Dessen* v. *Department of Labor & Industries*, 190 Wash. 69, 66 P. (2d) 867, asserting that the holding there is inconsistent with the holding in the *Comar* case. The accident in that case occurred on navigable waters, but the question of maritime jurisdiction was not raised nor discussed, much less decided. The case has no authoritative value upon the question now raised. *Petley* v. *Tacoma*, 127 Wash. 459, 221 Pac. 579.

Judgment affirmed.

Blake, J.

We concur:

Robinson, C. J., Beals, J., Simpson, J., Jeffers, J.

[File endorsement omitted.]

[fol. 21] IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed Feb. 16, 1942

The court having considered appellant's petition for a rehearing herein;

It is Ordered that the petition be and it hereby is denied.

Dated this 9th day of February, 1942.

By the Court:

John S. Robinson, Chief Justice.

[File endorsement omitted.]

[fol. 22] IN SUPREME COURT OF WASHINGTON

No. 28464

King County No. 325557

OPAL SAXTON DAVIS, Appellant,

vs.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON, Respondent

JUDGMENT—February 16, 1942

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court

of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 16 day of February, A. D. 1942, on motion of Smith Troy, Esquire, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said Department of Labor and Industries have and recover of and from the said Opal Saxton Davis, and from United Pacific Insurance Company, surety, the costs of this action taxed and allowed at Twenty-seven and no/100 ($27.00) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

Of record in Volume 35 at page 555 of the Records and Files of the Supreme Court of the State of Washington.

[fol. 23] IN SUPREME COURT OF WASHINGTON

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 31, 1942

Hon. Benj. T. Hart, Clerk:

Please prepare transcript of record for Writ of Certiorari containing the following, and transmit the same to the Clerk of the Supreme Court of the United States:

1. Opal Saxton Davis' claim for Pension.
2. Denial of Claim by Supervisor.
3. Order sustaining Supervisor.
4. Notice of Appeal from Joint Board.
5. Findings of Fact and Conclusions of Law.
6. Judgment of Dismissal.
7. Journal Entry—Oral Notice of Appeal.
8. Opinion of Supreme Court.
9. Order Denying Petition for Rehearing.
10. Judgment of Supreme Court.
11. This Praecipe.

Please forward also Plaintiff's Original Exhibits 5 and 6 (photographs).

McMicken, Rupp & Schweppe, Attorneys for Appellant.

Stipulation

It is hereby stipulated that the above contains all matters essential to a consideration of the questions to be presented by the petition for Writ of Certiorari and for review on writ of certiorari if the petition is granted and that in printing the record all captions may be omitted.

Dated March 31, 1942.

McMicken, Rupp & Schweppe, Attorneys for Appellant. Smith Troy, Attorney General of the State of Washington; Edward S. Franklin, Assistant Attorney General.

[File endorsement omitted.]

[fol. 24] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 25] In Supreme Court of Washington

[Title omitted]

Order to Transmit Original Exhibits—Filed April 1, 1942

It is hereby Ordered that the Clerk of this Court may transmit original Exhibits Nos. 5 and 6 of the above cause to the Clerk of the Supreme Court of the United States as part of the record for Writ of Certiorari, the same to be finally returned to this Court.

Dated this 31st day of March, 1942.

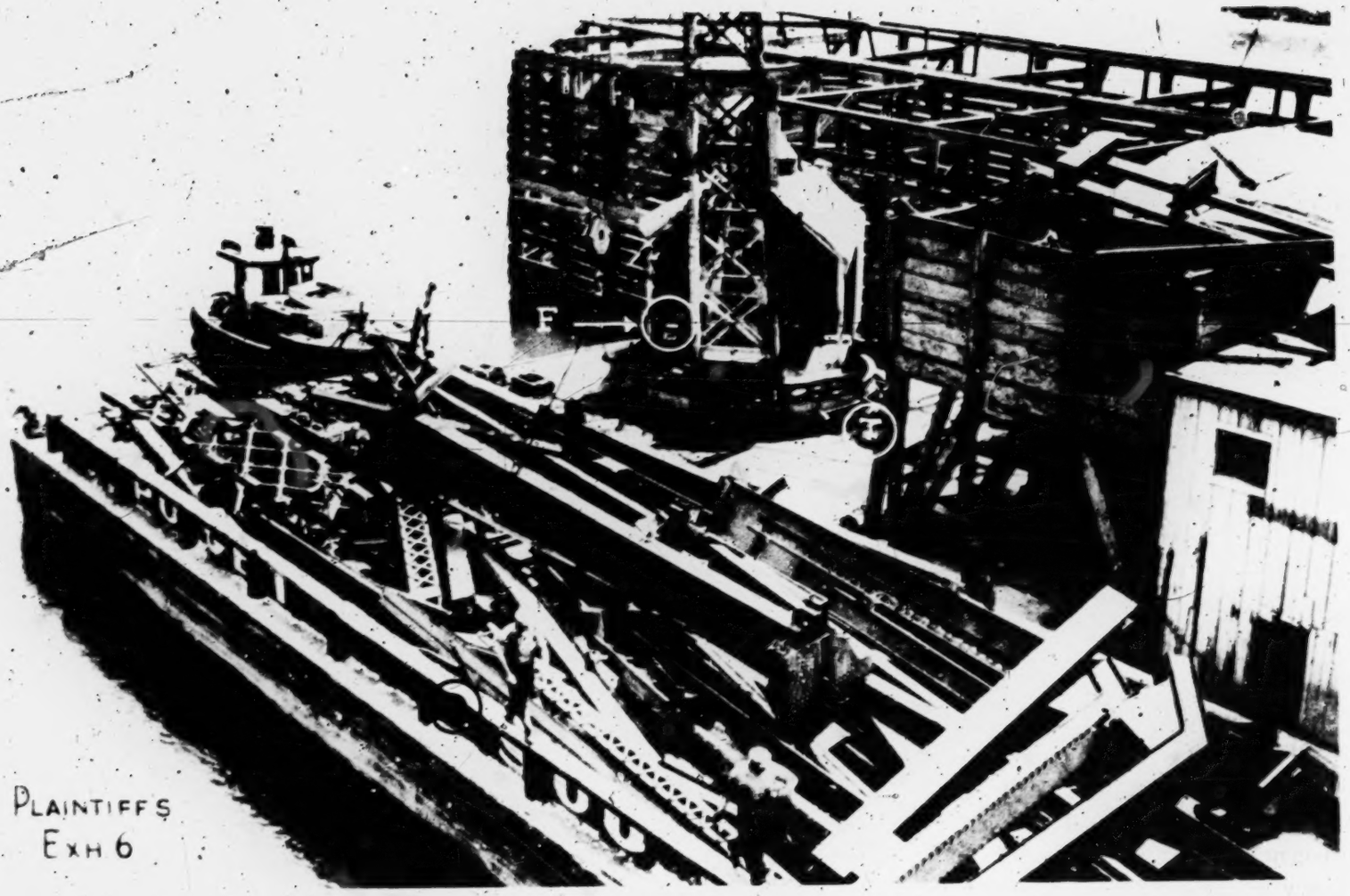
John S. Robinson, Chief Justice.

OK. McMicken, Rupp & Schweppe. Smith Troy, Attorney General; Edw. S. Franklin, Asst.

[File endorsement omitted.]

(Here follow 2 photolithographs, side folios 26-27)

W
S
N
E



PLAINTIFFS
EXH 6

[fol. 28] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 29] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 25, 1942

The petition herein for a writ of certiorari to the Supreme Court of the State of Washington is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.